competition commission
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Collusive agreements (cartels)

What is a cartel

Cartel refers to collusive agreements between enterprises. Such agreements are prohibited since they are the most serious form of anti-competitive conduct. The three forms of collusion under the Competition Act 2007 are -

- Horizontal agreements between rival firms to fix selling price, to share the market or to restrict output. (section 41)
- Bid rigging agreements (section 42)
- Agreements between supplier and reseller on the resale price (section 43)

Horizontal agreement

A horizontal agreement is one that exist between enterprises operating in the same market. In other words, the enterprises are competitors to one another (e.g. they supply similar or closely similar goods/services).

Price fixing - This would include for example agreements between rival businesses on the amount or percentage by which prices are to be increased, a minimum selling price, the margins or mark-up to be realised, and the level of discounts, amongst others.

Market sharing - In a market-sharing cartel the firms agree on how to share the market between so as not to compete with each other. This is done by allocating customers on the basis of geographic area or territory, type or size of customer, or by dividing contracts by value within an area, amongst others.

Restriction of output – Restriction of output occurs when enterprises agree with each other to restrict their production capacities or not to divert production into other markets. Such agreement would lead to an artificial shoratge and driving up price.

Bid rigging

Bid rigging occurs when businesses agree with another not to participate in a call for bids or they agree on the price, terms or conditions they would submit as their offers in response to a call for bid.

Vertical agreement - resale price maintenance

A vertical agreement is one that exist between enterprises which operates at a different level of the production or distribution chain. Thus, an agreement between a supplier and its dealer/reseller would be collusive if the object is to directly or indirectly establish a fixed or minimum price or price level to be observed by the dealer when reselling the supplier's product or service.

Financial penalty

A collusive agreement is the only form of anti-competitive conduct which may be penalised with fines. A financial penalty may be imposed on an enterprise if the collusion was committed intentionally or negligently.

The level of financial penalty that may be imposed can rise up to 10% of the turnover of the enterprise in Mauritius during the period of the breach of the prohibition up to a maximum period of 5 years.

Leniency

An enterprise which discloses a cartel may benefit from leniency, i.e. immunity or up to 100% reduction in fine. See our brochure on leniency on our website

Try our 'CORE Training': www.competitioncommission.mu

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